

AMENDED IN SENATE JULY 2, 2012
AMENDED IN ASSEMBLY APRIL 24, 2012
CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2094

Introduced by Assembly Member Butler
(Coauthor: Senator Rubio)

February 23, 2012

An act to amend Section 1203.097 of the Penal Code, relating to domestic violence.

LEGISLATIVE COUNSEL'S DIGEST

AB 2094, as amended, Butler. Domestic violence: probation: fee.

Existing law requires, if a person is granted probation for a domestic violence crime, that the terms of the probation include a minimum period of probation of 36 months, a criminal court protective order protecting the victim from further acts of violence or harassment, and a minimum payment by the defendant of \$400 for state and local domestic violence programs, among other things. Existing law specifies that the court may reduce or waive the \$400 fee if, after a hearing, the court finds that the defendant does not have the ability to pay.

This bill would increase the fee from \$400 to \$500. The bill would, if the court finds that the defendant does not have the ability to pay, require the court to state on the record the reason for reducing or waiving the fee.

This bill would incorporate additional changes in Section 1203.097 of the Penal Code, proposed by AB 1165, to be operative only if AB 1165 and this bill are both chaptered and become effective on or before January 1, 2013, and this bill is chaptered last.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1203.097 of the Penal Code is amended
2 to read:
3 1203.097. (a) If a person is granted probation for a crime in
4 which the victim is a person defined in Section 6211 of the Family
5 Code, the terms of probation shall include all of the following:
6 (1) A minimum period of probation of 36 months, which may
7 include a period of summary probation as appropriate.
8 (2) A criminal court protective order protecting the victim from
9 further acts of violence, threats, stalking, sexual abuse, and
10 harassment, and, if appropriate, containing residence exclusion or
11 stay-away conditions.
12 (3) Notice to the victim of the disposition of the case.
13 (4) Booking the defendant within one week of sentencing if the
14 defendant has not already been booked.
15 (5) A minimum payment by the defendant of five hundred
16 dollars (\$500) to be disbursed as specified in this paragraph. If,
17 after a hearing in open court, the court finds that the defendant
18 does not have the ability to pay, the court may reduce or waive
19 this fee. If the court exercises its discretion to reduce or waive the
20 fee, it shall state the reason on the record.
21 Two-thirds of the moneys deposited with the county treasurer
22 pursuant to this section shall be retained by counties and deposited
23 in the domestic violence programs special fund created pursuant
24 to Section 18305 of the Welfare and Institutions Code, to be
25 expended for the purposes of Chapter 5 (commencing with Section
26 18290) of Part 6 of Division 9 of the Welfare and Institutions Code.
27 The remainder shall be transferred, once a month, to the Controller
28 for deposit in equal amounts in the Domestic Violence Restraining
29 Order Reimbursement Fund and in the Domestic Violence Training
30 and Education Fund, which are hereby created, in an amount equal
31 to one-third of funds collected during the preceding month. Moneys
32 deposited into these funds pursuant to this section shall be available
33 upon appropriation by the Legislature and shall be distributed each
34 fiscal year as follows:

1 (A) Funds from the Domestic Violence Restraining Order
2 Reimbursement Fund shall be distributed to local law enforcement
3 or other criminal justice agencies for state-mandated local costs
4 resulting from the notification requirements set forth in subdivision
5 (b) of Section 6380 of the Family Code, based on the annual
6 notification from the Department of Justice of the number of
7 restraining orders issued and registered in the state domestic
8 violence restraining order registry maintained by the Department
9 of Justice, for the development and maintenance of the domestic
10 violence restraining order databank system.

11 (B) Funds from the Domestic Violence Training and Education
12 Fund shall support a statewide training and education program to
13 increase public awareness of domestic violence and to improve
14 the scope and quality of services provided to the victims of
15 domestic violence. Grants to support this program shall be awarded
16 on a competitive basis and be administered by the State Department
17 of Public Health, in consultation with the statewide domestic
18 violence coalition, which is eligible to receive funding under this
19 section.

20 (6) Successful completion of a batterer's program, as defined
21 in subdivision (c), or if none is available, another appropriate
22 counseling program designated by the court, for a period not less
23 than one year with periodic progress reports by the program to the
24 court every three months or less and weekly sessions of a minimum
25 of two hours class time duration. The defendant shall attend
26 consecutive weekly sessions, unless granted an excused absence
27 for good cause by the program for no more than three individual
28 sessions during the entire program, and shall complete the program
29 within 18 months, unless, after a hearing, the court finds good
30 cause to modify the requirements of consecutive attendance or
31 completion within 18 months.

32 (7) (A) (i) The court shall order the defendant to comply with
33 all probation requirements, including the requirements to attend
34 counseling, keep all program appointments, and pay program fees
35 based upon the ability to pay.

36 (ii) The terms of probation for offenders shall not be lifted until
37 all reasonable fees due to the counseling program have been paid
38 in full, but in no case shall probation be extended beyond the term
39 provided in subdivision (a) of Section 1203.1. If the court finds
40 that the defendant does not have the ability to pay the fees based

1 on the defendant's changed circumstances, the court may reduce
2 or waive the fees.

3 (B) Upon request by the batterer's program, the court shall
4 provide the defendant's arrest report, prior incidents of violence,
5 and treatment history to the program.

6 (8) The court also shall order the defendant to perform a
7 specified amount of appropriate community service, as designated
8 by the court. The defendant shall present the court with proof of
9 completion of community service and the court shall determine if
10 the community service has been satisfactorily completed. If
11 sufficient staff and resources are available, the community service
12 shall be performed under the jurisdiction of the local agency
13 overseeing a community service program.

14 (9) If the program finds that the defendant is unsuitable, the
15 program shall immediately contact the probation department or
16 the court. The probation department or court shall either recalendar
17 the case for hearing or refer the defendant to an appropriate
18 alternative batterer's program.

19 (10) (A) Upon recommendation of the program, a court shall
20 require a defendant to participate in additional sessions throughout
21 the probationary period, unless it finds that it is not in the interests
22 of justice to do so, states its reasons on the record, and enters them
23 into the minutes. In deciding whether the defendant would benefit
24 from more sessions, the court shall consider whether any of the
25 following conditions exists:

26 (i) The defendant has been violence free for a minimum of six
27 months.

28 (ii) The defendant has cooperated and participated in the
29 batterer's program.

30 (iii) The defendant demonstrates an understanding of and
31 practices positive conflict resolution skills.

32 (iv) The defendant blames, degrades, or has committed acts that
33 dehumanize the victim or puts at risk the victim's safety, including,
34 but not limited to, molesting, stalking, striking, attacking,
35 threatening, sexually assaulting, or battering the victim.

36 (v) The defendant demonstrates an understanding that the use
37 of coercion or violent behavior to maintain dominance is
38 unacceptable in an intimate relationship.

39 (vi) The defendant has made threats to harm anyone in any
40 manner.

1 (vii) The defendant has complied with applicable requirements
2 under paragraph (6) of subdivision (c) or subparagraph (C) to
3 receive alcohol counseling, drug counseling, or both.

4 (viii) The defendant demonstrates acceptance of responsibility
5 for the abusive behavior perpetrated against the victim.

6 (B) The program shall immediately report any violation of the
7 terms of the protective order, including any new acts of violence
8 or failure to comply with the program requirements, to the court,
9 the prosecutor, and, if formal probation has been ordered, to the
10 probation department. The probationer shall file proof of
11 enrollment in a batterer's program with the court within 30 days
12 of conviction.

13 (C) Concurrent with other requirements under this section, in
14 addition to, and not in lieu of, the batterer's program, and unless
15 prohibited by the referring court, the probation department or the
16 court may make provisions for a defendant to use his or her
17 resources to enroll in a chemical dependency program or to enter
18 voluntarily a licensed chemical dependency recovery hospital or
19 residential treatment program that has a valid license issued by the
20 state to provide alcohol or drug services to receive program
21 participation credit, as determined by the court. The probation
22 department shall document evidence of this hospital or residential
23 treatment participation in the defendant's program file.

24 (11) The conditions of probation may include, in lieu of a fine,
25 but not in lieu of the fund payment required under paragraph (5),
26 one or more of the following requirements:

27 (A) That the defendant make payments to a battered women's
28 shelter, up to a maximum of five thousand dollars (\$5,000).

29 (B) That the defendant reimburse the victim for reasonable
30 expenses that the court finds are the direct result of the defendant's
31 offense.

32 For any order to pay a fine, to make payments to a battered
33 women's shelter, or to pay restitution as a condition of probation
34 under this subdivision, the court shall make a determination of the
35 defendant's ability to pay. Determination of a defendant's ability
36 to pay may include his or her future earning capacity. A defendant
37 shall bear the burden of demonstrating lack of his or her ability to
38 pay. Express findings by the court as to the factors bearing on the
39 amount of the fine shall not be required. In no event shall any order
40 to make payments to a battered women's shelter be made if it

1 would impair the ability of the defendant to pay direct restitution
2 to the victim or court-ordered child support. When the injury to a
3 married person is caused, in whole or in part, by the criminal acts
4 of his or her spouse in violation of this section, the community
5 property shall not be used to discharge the liability of the offending
6 spouse for restitution to the injured spouse, as required by Section
7 1203.04, as operative on or before August 2, 1995, or Section
8 1202.4, or to a shelter for costs with regard to the injured spouse,
9 until all separate property of the offending spouse is exhausted.

10 (12) If it appears to the prosecuting attorney, the court, or the
11 probation department that the defendant is performing
12 unsatisfactorily in the assigned program, is not benefiting from
13 counseling, or has engaged in criminal conduct, upon request of
14 the probation officer, the prosecuting attorney, or on its own
15 motion, the court, as a priority calendar item, shall hold a hearing
16 to determine whether further sentencing should proceed. The court
17 may consider factors, including, but not limited to, any violence
18 by the defendant against the former or a new victim while on
19 probation and noncompliance with any other specific condition of
20 probation. If the court finds that the defendant is not performing
21 satisfactorily in the assigned program, is not benefiting from the
22 program, has not complied with a condition of probation, or has
23 engaged in criminal conduct, the court shall terminate the
24 defendant's participation in the program and shall proceed with
25 further sentencing.

26 (b) If a person is granted formal probation for a crime in which
27 the victim is a person defined in Section 6211 of the Family Code,
28 in addition to the terms specified in subdivision (a), all of the
29 following shall apply:

30 (1) The probation department shall make an investigation and
31 take into consideration the defendant's age, medical history,
32 employment and service records, educational background,
33 community and family ties, prior incidents of violence, police
34 report, treatment history, if any, demonstrable motivation, and
35 other mitigating factors in determining which batterer's program
36 would be appropriate for the defendant. This information shall be
37 provided to the batterer's program if it is requested. The probation
38 department shall also determine which community programs the
39 defendant would benefit from and which of those programs would

1 accept the defendant. The probation department shall report its
2 findings and recommendations to the court.

3 (2) The court shall advise the defendant that the failure to report
4 to the probation department for the initial investigation, as directed
5 by the court, or the failure to enroll in a specified program, as
6 directed by the court or the probation department, shall result in
7 possible further incarceration. The court, in the interests of justice,
8 may relieve the defendant from the prohibition set forth in this
9 subdivision based upon the defendant's mistake or excusable
10 neglect. Application for this relief shall be filed within 20 court
11 days of the missed deadline. This time limitation may not be
12 extended. A copy of any application for relief shall be served on
13 the office of the prosecuting attorney.

14 (3) After the court orders the defendant to a batterer's program,
15 the probation department shall conduct an initial assessment of
16 the defendant, including, but not limited to, all of the following:

- 17 (A) Social, economic, and family background.
- 18 (B) Education.
- 19 (C) Vocational achievements.
- 20 (D) Criminal history.
- 21 (E) Medical history.
- 22 (F) Substance abuse history.
- 23 (G) Consultation with the probation officer.
- 24 (H) Verbal consultation with the victim, only if the victim
25 desires to participate.
- 26 (I) Assessment of the future probability of the defendant
27 committing murder.

28 (4) The probation department shall attempt to notify the victim
29 regarding the requirements for the defendant's participation in the
30 batterer's program, as well as regarding available victim resources.
31 The victim also shall be informed that attendance in any program
32 does not guarantee that an abuser will not be violent.

33 (c) The court or the probation department shall refer defendants
34 only to batterer's programs that follow standards outlined in
35 paragraph (1), which may include, but are not limited to, lectures,
36 classes, group discussions, and counseling. The probation
37 department shall design and implement an approval and renewal
38 process for batterer's programs and shall solicit input from criminal
39 justice agencies and domestic violence victim advocacy programs.

1 (1) The goal of a batterer's program under this section shall be
2 to stop domestic violence. A batterer's program shall consist of
3 the following components:

4 (A) Strategies to hold the defendant accountable for the violence
5 in a relationship, including, but not limited to, providing the
6 defendant with a written statement that the defendant shall be held
7 accountable for acts or threats of domestic violence.

8 (B) A requirement that the defendant participate in ongoing
9 same-gender group sessions.

10 (C) An initial intake that provides written definitions to the
11 defendant of physical, emotional, sexual, economic, and verbal
12 abuse, and the techniques for stopping these types of abuse.

13 (D) Procedures to inform the victim regarding the requirements
14 for the defendant's participation in the intervention program as
15 well as regarding available victim resources. The victim also shall
16 be informed that attendance in any program does not guarantee
17 that an abuser will not be violent.

18 (E) A requirement that the defendant attend group sessions free
19 of chemical influence.

20 (F) Educational programming that examines, at a minimum,
21 gender roles, socialization, the nature of violence, the dynamics
22 of power and control, and the effects of abuse on children and
23 others.

24 (G) A requirement that excludes any couple counseling or family
25 counseling, or both.

26 (H) Procedures that give the program the right to assess whether
27 or not the defendant would benefit from the program and to refuse
28 to enroll the defendant if it is determined that the defendant would
29 not benefit from the program, so long as the refusal is not because
30 of the defendant's inability to pay. If possible, the program shall
31 suggest an appropriate alternative program.

32 (I) Program staff who, to the extent possible, have specific
33 knowledge regarding, but not limited to, spousal abuse, child abuse,
34 sexual abuse, substance abuse, the dynamics of violence and abuse,
35 the law, and procedures of the legal system.

36 (J) Program staff who are encouraged to utilize the expertise,
37 training, and assistance of local domestic violence centers.

38 (K) A requirement that the defendant enter into a written
39 agreement with the program, which shall include an outline of the
40 contents of the program, the attendance requirements, the

1 requirement to attend group sessions free of chemical influence,
2 and a statement that the defendant may be removed from the
3 program if it is determined that the defendant is not benefiting
4 from the program or is disruptive to the program.

5 (L) A requirement that the defendant sign a confidentiality
6 statement prohibiting disclosure of any information obtained
7 through participating in the program or during group sessions
8 regarding other participants in the program.

9 (M) Program content that provides cultural and ethnic
10 sensitivity.

11 (N) A requirement of a written referral from the court or
12 probation department prior to permitting the defendant to enroll
13 in the program. The written referral shall state the number of
14 minimum sessions required by the court.

15 (O) Procedures for submitting to the probation department all
16 of the following uniform written responses:

17 (i) Proof of enrollment, to be submitted to the court and the
18 probation department and to include the fee determined to be
19 charged to the defendant, based upon the ability to pay, for each
20 session.

21 (ii) Periodic progress reports that include attendance, fee
22 payment history, and program compliance.

23 (iii) Final evaluation that includes the program's evaluation of
24 the defendant's progress, using the criteria set forth in subparagraph
25 (A) of paragraph (10) of subdivision (a) and recommendation for
26 either successful or unsuccessful termination or continuation in
27 the program.

28 (P) A sliding fee schedule based on the defendant's ability to
29 pay. The batterer's program shall develop and utilize a sliding fee
30 scale that recognizes both the defendant's ability to pay and the
31 necessity of programs to meet overhead expenses. An indigent
32 defendant may negotiate a deferred payment schedule, but shall
33 pay a nominal fee, if the defendant has the ability to pay the
34 nominal fee. Upon a hearing and a finding by the court that the
35 defendant does not have the financial ability to pay the nominal
36 fee, the court shall waive this fee. The payment of the fee shall be
37 made a condition of probation if the court determines the defendant
38 has the present ability to pay the fee. The fee shall be paid during
39 the term of probation unless the program sets other conditions.

1 The acceptance policies shall be in accordance with the scaled fee
2 system.

3 (2) The court shall refer persons only to batterer's programs
4 that have been approved by the probation department pursuant to
5 paragraph (5). The probation department shall do both of the
6 following:

7 (A) Provide for the issuance of a provisional approval, provided
8 that the applicant is in substantial compliance with applicable laws
9 and regulations and an urgent need for approval exists. A
10 provisional approval shall be considered an authorization to provide
11 services and shall not be considered a vested right.

12 (B) If the probation department determines that a program is
13 not in compliance with standards set by the department, the
14 department shall provide written notice of the noncompliant areas
15 to the program. The program shall submit a written plan of
16 corrections within 14 days from the date of the written notice on
17 noncompliance. A plan of correction shall include, but not be
18 limited to, a description of each corrective action and timeframe
19 for implementation. The department shall review and approve all
20 or any part of the plan of correction and notify the program of
21 approval or disapproval in writing. If the program fails to submit
22 a plan of correction or fails to implement the approved plan of
23 correction, the department shall consider whether to revoke or
24 suspend approval and, upon revoking or suspending approval, shall
25 have the option to cease referrals of defendants under this section.

26 (3) No program, regardless of its source of funding, shall be
27 approved unless it meets all of the following standards:

28 (A) The establishment of guidelines and criteria for education
29 services, including standards of services that may include lectures,
30 classes, and group discussions.

31 (B) Supervision of the defendant for the purpose of evaluating
32 the person's progress in the program.

33 (C) Adequate reporting requirements to ensure that all persons
34 who, after being ordered to attend and complete a program, may
35 be identified for either failure to enroll in, or failure to successfully
36 complete, the program or for the successful completion of the
37 program as ordered. The program shall notify the court and the
38 probation department, in writing, within the period of time and in
39 the manner specified by the court of any person who fails to
40 complete the program. Notification shall be given if the program

1 determines that the defendant is performing unsatisfactorily or if
2 the defendant is not benefiting from the education, treatment, or
3 counseling.

4 (D) No victim shall be compelled to participate in a program
5 or counseling, and no program may condition a defendant's
6 enrollment on participation by the victim.

7 (4) In making referrals of indigent defendants to approved
8 batterer's programs, the probation department shall apportion these
9 referrals evenly among the approved programs.

10 (5) The probation department shall have the sole authority to
11 approve a batterer's program for probation. The program shall be
12 required to obtain only one approval but shall renew that approval
13 annually.

14 (A) The procedure for the approval of a new or existing program
15 shall include all of the following:

16 (i) The completion of a written application containing necessary
17 and pertinent information describing the applicant program.

18 (ii) The demonstration by the program that it possesses adequate
19 administrative and operational capability to operate a batterer's
20 treatment program. The program shall provide documentation to
21 prove that the program has conducted batterer's programs for at
22 least one year prior to application. This requirement may be waived
23 under subparagraph (A) of paragraph (2) if there is no existing
24 batterer's program in the city, county, or city and county.

25 (iii) The onsite review of the program, including monitoring of
26 a session to determine that the program adheres to applicable
27 statutes and regulations.

28 (iv) The payment of the approval fee.

29 (B) The probation department shall fix a fee for approval not
30 to exceed two hundred fifty dollars (\$250) and for approval renewal
31 not to exceed two hundred fifty dollars (\$250) every year in an
32 amount sufficient to cover its costs in administering the approval
33 process under this section. No fee shall be charged for the approval
34 of local governmental entities.

35 (C) The probation department has the sole authority to approve
36 the issuance, denial, suspension, or revocation of approval and to
37 cease new enrollments or referrals to a batterer's program under
38 this section. The probation department shall review information
39 relative to a program's performance or failure to adhere to
40 standards, or both. The probation department may suspend or

1 revoke any approval issued under this subdivision or deny an
2 application to renew an approval or to modify the terms and
3 conditions of approval, based on grounds established by probation,
4 including, but not limited to, either of the following:

5 (i) Violation of this section by any person holding approval or
6 by a program employee in a program under this section.

7 (ii) Misrepresentation of any material fact in obtaining the
8 approval.

9 (6) For defendants who are chronic users or serious abusers of
10 drugs or alcohol, standard components in the program shall include
11 concurrent counseling for substance abuse and violent behavior,
12 and in appropriate cases, detoxification and abstinence from the
13 abused substance.

14 (7) The program shall conduct an exit conference that assesses
15 the defendant's progress during his or her participation in the
16 batterer's program.

17 *SEC. 1.5. Section 1203.097 of the Penal Code is amended to*
18 *read:*

19 1203.097. (a) If a person is granted probation for a crime in
20 which the victim is a person defined in Section 6211 of the Family
21 Code, the terms of probation shall include all of the following:

22 (1) A minimum period of probation of 36 months, which may
23 include a period of summary probation as appropriate.

24 (2) A criminal court protective order protecting the victim from
25 further acts of violence, threats, stalking, sexual abuse, and
26 harassment, and, if appropriate, containing residence exclusion or
27 stay-away conditions.

28 (3) Notice to the victim of the disposition of the case.

29 (4) Booking the defendant within one week of sentencing if the
30 defendant has not already been booked.

31 (5) (A) A minimum payment by the defendant of ~~four~~ five
32 hundred dollars ~~(\$400)~~ (\$500) to be disbursed as specified in this
33 paragraph. If, after a hearing in open court on the record, the court
34 finds that the defendant does not have the ability to pay, the court
35 may reduce or waive this fee. *If the court exercises its discretion*
36 *to reduce or waive the fee, it shall state the reason on the record.*

37 (B) Two-thirds of the moneys deposited with the county
38 treasurer pursuant to this section shall be retained by counties and
39 deposited in the domestic violence programs special fund created
40 pursuant to Section 18305 of the Welfare and Institutions Code,

1 to be expended for the purposes of Chapter 5 (commencing with
2 Section 18290) of Part 6 of Division 9 of the Welfare and
3 Institutions Code. The remainder shall be transferred, once a month,
4 to the Controller for deposit in equal amounts in the Domestic
5 Violence Restraining Order Reimbursement Fund and in the
6 Domestic Violence Training and Education Fund, which are hereby
7 created, in an amount equal to one-third of funds collected during
8 the preceding month. Moneys deposited into these funds pursuant
9 to this section shall be available upon appropriation by the
10 Legislature and shall be distributed each fiscal year as follows:

11 (A)

12 (i) Funds from the Domestic Violence Restraining Order
13 Reimbursement Fund shall be distributed to local law enforcement
14 or other criminal justice agencies for state-mandated local costs
15 resulting from the notification requirements set forth in subdivision
16 (b) of Section 6380 of the Family Code, based on the annual
17 notification from the Department of Justice of the number of
18 restraining orders issued and registered in the state domestic
19 violence restraining order registry maintained by the Department
20 of Justice, for the development and maintenance of the domestic
21 violence restraining order databank system.

22 (B)

23 (ii) Funds from the Domestic Violence Training and Education
24 Fund shall support a statewide training and education program to
25 increase public awareness of domestic violence and to improve
26 the scope and quality of services provided to the victims of
27 domestic violence. Grants to support this program shall be awarded
28 on a competitive basis and be administered by the State Department
29 of Public Health, in consultation with the statewide domestic
30 violence coalition, which is eligible to receive funding under this
31 section.

32 (6) Successful completion of a batterer's program, as defined
33 in subdivision (c), or if none is available, another appropriate
34 counseling program designated by the court, for a period not less
35 than one year with periodic progress reports by the program to the
36 court every three months or less and weekly sessions of a minimum
37 of two hours class time duration. The defendant shall attend
38 consecutive weekly sessions, unless granted an excused absence
39 for good cause by the program for no more than three individual
40 sessions during the entire program, and shall complete the program

1 within 18 months, unless, after a hearing, the court finds good
2 cause to modify the requirements of consecutive attendance or
3 completion within 18 months.

4 (7) (A) (i) The court shall order the defendant to comply with
5 all probation requirements, including the requirements to attend
6 counseling, keep all program appointments, and pay program fees
7 based upon the ability to pay.

8 (ii) The terms of probation for offenders shall not be lifted until
9 all reasonable fees due to the counseling program have been paid
10 in full, but in no case shall probation be extended beyond the term
11 provided in subdivision (a) of Section 1203.1. If the court finds
12 that the defendant does not have the ability to pay the fees based
13 on the defendant's changed circumstances, the court may reduce
14 or waive the fees.

15 (B) Upon request by the batterer's program, the court shall
16 provide the defendant's arrest report, prior incidents of violence,
17 and treatment history to the program.

18 (8) The court also shall order the defendant to perform a
19 specified amount of appropriate community service, as designated
20 by the court. The defendant shall present the court with proof of
21 completion of community service and the court shall determine if
22 the community service has been satisfactorily completed. If
23 sufficient staff and resources are available, the community service
24 shall be performed under the jurisdiction of the local agency
25 overseeing a community service program.

26 (9) If the program finds that the defendant is unsuitable, the
27 program shall immediately contact the probation department or
28 the court. The probation department or court shall either recalendar
29 the case for hearing or refer the defendant to an appropriate
30 alternative batterer's program.

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32 require a defendant to participate in additional sessions throughout
33 the probationary period, unless it finds that it is not in the interests
34 of justice to do so, states its reasons on the record, and enters them
35 into the minutes. In deciding whether the defendant would benefit
36 from more sessions, the court shall consider whether any of the
37 following conditions exists:

38 (i) The defendant has been violence free for a minimum of six
39 months.

1 (ii) The defendant has cooperated and participated in the
2 batterer's program.

3 (iii) The defendant demonstrates an understanding of and
4 practices positive conflict resolution skills.

5 (iv) The defendant blames, degrades, or has committed acts that
6 dehumanize the victim or puts at risk the victim's safety, including,
7 but not limited to, molesting, stalking, striking, attacking,
8 threatening, sexually assaulting, or battering the victim.

9 (v) The defendant demonstrates an understanding that the use
10 of coercion or violent behavior to maintain dominance is
11 unacceptable in an intimate relationship.

12 (vi) The defendant has made threats to harm anyone in any
13 manner.

14 (vii) The defendant has complied with applicable requirements
15 under paragraph (6) of subdivision (c) or subparagraph (C) to
16 receive alcohol counseling, drug counseling, or both.

17 (viii) The defendant demonstrates acceptance of responsibility
18 for the abusive behavior perpetrated against the victim.

19 (B) The program shall immediately report any violation of the
20 terms of the protective order, including any new acts of violence
21 or failure to comply with the program requirements, to the court,
22 the prosecutor, and, if formal probation has been ordered, to the
23 probation department. The probationer shall file proof of
24 enrollment in a batterer's program with the court within 30 days
25 of conviction.

26 (C) Concurrent with other requirements under this section, in
27 addition to, and not in lieu of, the batterer's program, and unless
28 prohibited by the referring court, the probation department or the
29 court may make provisions for a defendant to use his or her
30 resources to enroll in a chemical dependency program or to enter
31 voluntarily a licensed chemical dependency recovery hospital or
32 residential treatment program that has a valid license issued by the
33 state to provide alcohol or drug services to receive program
34 participation credit, as determined by the court. The probation
35 department shall document evidence of this hospital or residential
36 treatment participation in the defendant's program file.

37 (11) The conditions of probation may include, in lieu of a fine,
38 but not in lieu of the fund payment required under paragraph (5),
39 one or more of the following requirements:

1 (A) That the defendant make payments to a battered women's
2 shelter, up to a maximum of five thousand dollars (\$5,000).

3 (B) That the defendant reimburse the victim for reasonable
4 expenses that the court finds are the direct result of the defendant's
5 offense.

6 For any order to pay a fine, to make payments to a battered
7 women's shelter, or to pay restitution as a condition of probation
8 under this subdivision, the court shall make a determination of the
9 defendant's ability to pay. Determination of a defendant's ability
10 to pay may include his or her future earning capacity. A defendant
11 shall bear the burden of demonstrating lack of his or her ability to
12 pay. Express findings by the court as to the factors bearing on the
13 amount of the fine shall not be required. In no event shall any order
14 to make payments to a battered women's shelter be made if it
15 would impair the ability of the defendant to pay direct restitution
16 to the victim or court-ordered child support. When the injury to a
17 married person is caused, in whole or in part, by the criminal acts
18 of his or her spouse in violation of this section, the community
19 property shall not be used to discharge the liability of the offending
20 spouse for restitution to the injured spouse, as required by Section
21 1203.04, as operative on or before August 2, 1995, or Section
22 1202.4, or to a shelter for costs with regard to the injured spouse,
23 until all separate property of the offending spouse is exhausted.

24 (12) If it appears to the prosecuting attorney, the court, or the
25 probation department that the defendant is performing
26 unsatisfactorily in the assigned program, is not benefiting from
27 counseling, or has engaged in criminal conduct, upon request of
28 the probation officer, the prosecuting attorney, or on its own
29 motion, the court, as a priority calendar item, shall hold a hearing
30 to determine whether further sentencing should proceed. The court
31 may consider factors, including, but not limited to, any violence
32 by the defendant against the former or a new victim while on
33 probation and noncompliance with any other specific condition of
34 probation. If the court finds that the defendant is not performing
35 satisfactorily in the assigned program, is not benefiting from the
36 program, has not complied with a condition of probation, or has
37 engaged in criminal conduct, the court shall terminate the
38 defendant's participation in the program and shall proceed with
39 further sentencing.

(b) If a person is granted formal probation for a crime in which the victim is a person defined in Section 6211 of the Family Code, in addition to the terms specified in subdivision (a), all of the following shall apply:

(1) The probation department shall make an investigation and take into consideration the defendant's age, medical history, employment and service records, educational background, community and family ties, prior incidents of violence, police report, treatment history, if any, demonstrable motivation, and other mitigating factors in determining which batterer's program would be appropriate for the defendant. This information shall be provided to the batterer's program if it is requested. The probation department shall also determine which community programs the defendant would benefit from and which of those programs would accept the defendant. The probation department shall report its findings and recommendations to the court.

(2) The court shall advise the defendant that the failure to report to the probation department for the initial investigation, as directed by the court, or the failure to enroll in a specified program, as directed by the court or the probation department, shall result in possible further incarceration. The court, in the interests of justice, may relieve the defendant from the prohibition set forth in this subdivision based upon the defendant's mistake or excusable neglect. Application for this relief shall be filed within 20 court days of the missed deadline. This time limitation may not be extended. A copy of any application for relief shall be served on the office of the prosecuting attorney.

(3) After the court orders the defendant to a batterer's program, the probation department shall conduct an initial assessment of the defendant, including, but not limited to, all of the following:

- (A) Social, economic, and family background.
- (B) Education.
- (C) Vocational achievements.
- (D) Criminal history.
- (E) Medical history.
- (F) Substance abuse history.
- (G) Consultation with the probation officer.
- (H) Verbal consultation with the victim, only if the victim desires to participate.

1 (I) Assessment of the future probability of the defendant
2 committing murder.

3 (4) The probation department shall attempt to notify the victim
4 regarding the requirements for the defendant's participation in the
5 batterer's program, as well as regarding available victim resources.
6 The victim also shall be informed that attendance in any program
7 does not guarantee that an abuser will not be violent.

8 (c) The court or the probation department shall refer defendants
9 only to batterer's programs that follow standards outlined in
10 paragraph (1), which may include, but are not limited to, lectures,
11 classes, group discussions, and counseling. The probation
12 department shall design and implement an approval and renewal
13 process for batterer's programs and shall solicit input from criminal
14 justice agencies and domestic violence victim advocacy programs.

15 (1) The goal of a batterer's program under this section shall be
16 to stop domestic violence. A batterer's program shall consist of
17 the following components:

18 (A) Strategies to hold the defendant accountable for the violence
19 in a relationship, including, but not limited to, providing the
20 defendant with a written statement that the defendant shall be held
21 accountable for acts or threats of domestic violence.

22 (B) A requirement that the defendant participate in ongoing
23 same-gender group sessions.

24 (C) An initial intake that provides written definitions to the
25 defendant of physical, emotional, sexual, economic, and verbal
26 abuse, and the techniques for stopping these types of abuse.

27 (D) Procedures to inform the victim regarding the requirements
28 for the defendant's participation in the intervention program as
29 well as regarding available victim resources. The victim also shall
30 be informed that attendance in any program does not guarantee
31 that an abuser will not be violent.

32 (E) A requirement that the defendant attend group sessions free
33 of chemical influence.

34 (F) Educational programming that examines, at a minimum,
35 gender roles, socialization, the nature of violence, the dynamics
36 of power and control, and the effects of abuse on children and
37 others.

38 (G) A requirement that excludes any couple counseling or family
39 counseling, or both.

1 (H) Procedures that give the program the right to assess whether
2 or not the defendant would benefit from the program and to refuse
3 to enroll the defendant if it is determined that the defendant would
4 not benefit from the program, so long as the refusal is not because
5 of the defendant's inability to pay. If possible, the program shall
6 suggest an appropriate alternative program.

7 (I) Program staff who, to the extent possible, have specific
8 knowledge regarding, but not limited to, spousal abuse, child abuse,
9 sexual abuse, substance abuse, the dynamics of violence and abuse,
10 the law, and procedures of the legal system.

11 (J) Program staff who are encouraged to utilize the expertise,
12 training, and assistance of local domestic violence centers.

13 (K) A requirement that the defendant enter into a written
14 agreement with the program, which shall include an outline of the
15 contents of the program, the attendance requirements, the
16 requirement to attend group sessions free of chemical influence,
17 and a statement that the defendant may be removed from the
18 program if it is determined that the defendant is not benefiting
19 from the program or is disruptive to the program.

20 (L) A requirement that the defendant sign a confidentiality
21 statement prohibiting disclosure of any information obtained
22 through participating in the program or during group sessions
23 regarding other participants in the program.

24 (M) Program content that provides cultural and ethnic
25 sensitivity.

26 (N) A requirement of a written referral from the court or
27 probation department prior to permitting the defendant to enroll
28 in the program. The written referral shall state the number of
29 minimum sessions required by the court.

30 (O) Procedures for submitting to the probation department all
31 of the following uniform written responses:

32 (i) Proof of enrollment, to be submitted to the court and the
33 probation department and to include the fee determined to be
34 charged to the defendant, based upon the ability to pay, for each
35 session.

36 (ii) Periodic progress reports that include attendance, fee
37 payment history, and program compliance.

38 (iii) Final evaluation that includes the program's evaluation of
39 the defendant's progress, using the criteria set forth in
40 *subparagraph (A) of paragraph (4) (10) of subdivision (a) and*

1 recommendation for either successful or unsuccessful termination
2 or continuation in the program.

3 (P) A sliding fee schedule based on the defendant's ability to
4 pay. The batterer's program shall develop and utilize a sliding fee
5 scale that recognizes both the defendant's ability to pay and the
6 necessity of programs to meet overhead expenses. An indigent
7 defendant may negotiate a deferred payment schedule, but shall
8 pay a nominal fee, if the defendant has the ability to pay the
9 nominal fee. Upon a hearing and a finding by the court that the
10 defendant does not have the financial ability to pay the nominal
11 fee, the court shall waive this fee. The payment of the fee shall be
12 made a condition of probation if the court determines the defendant
13 has the present ability to pay the fee. The fee shall be paid during
14 the term of probation unless the program sets other conditions.
15 The acceptance policies shall be in accordance with the scaled fee
16 system.

17 (2) The court shall refer persons only to batterer's programs
18 that have been approved by the probation department pursuant to
19 paragraph (5). The probation department shall do both of the
20 following:

21 (A) Provide for the issuance of a provisional approval, provided
22 that the applicant is in substantial compliance with applicable laws
23 and regulations and an urgent need for approval exists. A
24 provisional approval shall be considered an authorization to provide
25 services and shall not be considered a vested right.

26 (B) If the probation department determines that a program is
27 not in compliance with standards set by the department, the
28 department shall provide written notice of the noncompliant areas
29 to the program. The program shall submit a written plan of
30 corrections within 14 days from the date of the written notice on
31 noncompliance. A plan of correction shall include, but not be
32 limited to, a description of each corrective action and timeframe
33 for implementation. The department shall review and approve all
34 or any part of the plan of correction and notify the program of
35 approval or disapproval in writing. If the program fails to submit
36 a plan of correction or fails to implement the approved plan of
37 correction, the department shall consider whether to revoke or
38 suspend approval and, upon revoking or suspending approval, shall
39 have the option to cease referrals of defendants under this section.

1 (3) No program, regardless of its source of funding, shall be
2 approved unless it meets all of the following standards:

3 (A) The establishment of guidelines and criteria for education
4 services, including standards of services that may include lectures,
5 classes, and group discussions.

6 (B) Supervision of the defendant for the purpose of evaluating
7 the person's progress in the program.

8 (C) Adequate reporting requirements to ensure that all persons
9 who, after being ordered to attend and complete a program, may
10 be identified for either failure to enroll in, or failure to successfully
11 complete, the program or for the successful completion of the
12 program as ordered. The program shall notify the court and the
13 probation department, in writing, within the period of time and in
14 the manner specified by the court of any person who fails to
15 complete the program. Notification shall be given if the program
16 determines that the defendant is performing unsatisfactorily or if
17 the defendant is not benefiting from the education, treatment, or
18 counseling.

19 (D) No victim shall be compelled to participate in a program
20 or counseling, and no program may condition a defendant's
21 enrollment on participation by the victim.

22 (4) In making referrals of indigent defendants to approved
23 batterer's programs, the probation department shall apportion these
24 referrals evenly among the approved programs.

25 (5) The probation department shall have the sole authority to
26 approve a batterer's program for probation. The program shall be
27 required to obtain only one approval but shall renew that approval
28 annually.

29 (A) The procedure for the approval of a new or existing program
30 shall include all of the following:

31 (i) The completion of a written application containing necessary
32 and pertinent information describing the applicant program.

33 (ii) The demonstration by the program that it possesses adequate
34 administrative and operational capability to operate a batterer's
35 treatment program. The program shall provide documentation to
36 prove that the program has conducted batterer's programs for at
37 least one year prior to application. This requirement may be waived
38 under subparagraph (A) of paragraph (2) if there is no existing
39 batterer's program in the city, county, or city and county.

1 (iii) The onsite review of the program, including monitoring of
2 a session to determine that the program adheres to applicable
3 statutes and regulations.

4 (iv) The payment of the approval fee.

5 (B) The probation department shall fix a fee for approval not
6 to exceed two hundred fifty dollars (\$250) and for approval renewal
7 not to exceed two hundred fifty dollars (\$250) every year in an
8 amount sufficient to cover its costs in administering the approval
9 process under this section. No fee shall be charged for the approval
10 of local governmental entities.

11 (C) The probation department has the sole authority to approve
12 the issuance, denial, suspension, or revocation of approval and to
13 cease new enrollments or referrals to a batterer's program under
14 this section. The probation department shall review information
15 relative to a program's performance or failure to adhere to
16 standards, or both. The probation department may suspend or
17 revoke ~~any~~ an approval issued under this subdivision or deny an
18 application to renew an approval or to modify the terms and
19 conditions of approval, based on grounds established by probation,
20 including, but not limited to, either of the following:

21 (i) Violation of this section by any person holding approval or
22 by a program employee in a program under this section.

23 (ii) Misrepresentation of any material fact in obtaining the
24 approval.

25 (6) For defendants who are chronic users or serious abusers of
26 drugs or alcohol, standard components in the program shall include
27 concurrent counseling for substance abuse and violent behavior,
28 and in appropriate cases, detoxification and abstinence from the
29 abused substance.

30 (7) The program shall conduct an exit conference that assesses
31 the defendant's progress during his or her participation in the
32 batterer's program.

33 ~~(d) This section shall become operative on January 1, 2010. An~~
34 ~~act or omission relating to the approval of a batterer's treatment~~
35 ~~programs under paragraph (5) of subdivision (c) is a discretionary~~
36 ~~act pursuant to Section 820.2 of the Government Code.~~

37 SEC. 2. Section 1.5 of this bill incorporates amendments to
38 Section 1203.097 of the Penal Code proposed by both this bill and
39 Assembly Bill 1165. It shall only become operative if (1) both bills
40 are enacted and become effective on or before January 1, 2013,

- 1 *(2) each bill amends Section 1203.097 of the Penal Code, and (3)*
- 2 *this bill is enacted after Assembly Bill 1165, in which case Section*
- 3 *1 of this bill shall not become operative.*

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